

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CWP No. 21652 of 2017

Date of Decision : 04.05.2022

The Panchkula Urban Co-operative Bank Limited

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satbir Rathore, Advocate for the petitioner.

Mr. Narender Singh Behgal, A.A.G., Haryana.

Mr. Ashish Jhamb, Advocate for
Mr. Rajbir Singh, Advocate for respondent No. 4.

Harsimran Singh Sethi J. (Oral)

1. The present petition has been filed for quashing of the order dated 26.08.2014 (Annexure P-9) as well as order dated 18.04.2017 (Annexure P-14) by which, the attachment of salary of respondent No. 4 has been held to be bad on the ground that salary of the principal debtor, is already attached.

2. As per the facts mentioned in the petition, respondent No. 5 took a loan from the petitioner-bank on 22.11.1995 amounting to ₹20,000/- on interest @ 14% per annum. The said amount was payable in 60 monthly installments of ₹500/- each. Respondent No. 4 along with one Mam Chand stood guarantor to the advancement of the loan to respondent No. 5.

Respondent No. 5, who had taken the said loan, became defaulter and he did not deposit the installments as scheduled. By 31.03.2007, a total sum of ₹48,795/- was due towards respondent No. 5 out of which, ₹19,867/- was of the Principal amount and ₹28,928/- as interest on the said amount.

3. Keeping in view the proceedings initiated by the petitioner-bank, a certificate for recovery was issued on 09.08.2007 (Annexure P-1) under Section 104 of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as 'Societies Act, 1984) for recovery of the said amount. Keeping in view the said recovery certificate, the petitioner-bank filed an Execution Application under Section 110 of the Societies Act, 1984. Vide order dated 22.01.2014 (Annexure P-3), Assistant Registrar, Cooperative Societies, Panchkula passed an order attaching the salary of respondent No. 4, who stood as a guarantor to the loan amount.

4. Respondent No. 4 in order to avoid his liability to pay being the guarantor, addressed a letter to the Assistant Registrar stating that principal debtor Ram Babu i.e. respondent No. 5 is working at Govt. Hospital, Rewari and, therefore, his salary should be attached instead of respondent No. 4. Keeping in view the said request and without verifying the genuinity of the request made by respondent No. 4, Assistant Registrar Cooperative Societies had passed an order dated 06.06.2014 (Annexure P-6) for attaching the salary of the principal debtor.

5. Thereafter, respondent No. 4 filed an appeal before the District Registrar Cooperative Societies, Kurukshetra against the order dated 22.01.2014 (Annexure P-3) with a prayer that as salary of the principal debtor has been attached, the attachment of the salary of respondent No. 4

be held to be bad. Though, the petitioner-bank objected to the same, but Deputy Registrar vide order dated 26.08.2014 (Annexure P-9), set-aside the order dated 22.01.2014 (Annexure P-3) by which, salary of respondent No. 4 was attached on the ground that salary of the principal debtor has already been attached and, therefore, two salaries of the principal debtor and guarantor cannot be attached simultaneously to recover the amount. Against the order dated 26.08.2014 (Annexure P-9), the petitioner-bank filed a revision petition before the higher authorities but without any success, as the said revision petition was also dismissed on 18.04.2017 (Annexure P-14) on the same ground that salary of the principal debtor has already been attached.

6. The said order dated 26.08.2014 (Annexure P-9) as well as order dated 18.04.2017 (Annexure P-14) are under challenge in the present petition.

7. I have heard learned counsel for the parties and have gone through the record with their able assistance.

8. Learned counsel for the petitioner argues that in the present case, respondent No. 5 has mislead the authorities concerned to believe that respondent No. 5, who is the principal debtor, was working in a Govt. Hospital, Rewari and, therefore, his salary should be stopped, whereas the hospital concerned has already given in writing that respondent No. 5 is not working in the Govt. Hospital, Rewari at all, which shows that the orders, which have been passed by the authorities concerned, have been passed without appreciating the actual facts and relying upon the incorrect facts being supplied by respondent No. 4. Learned counsel submits that keeping

in view the said fact even as of now, no amount either the principal amount or the interest has been recovered by the bank and the bank is suffering prejudice keeping in view the impugned order passed by the authorities concerned.

9. Learned State counsel submits that the orders, which have been passed by the authorities concerned under the Societies Act, 1984, were based upon the facts supplied by respondent No. 4.

10. Learned counsel appearing on behalf of respondent No. 4 submits that the petitioner-bank should have made an endeavor to recover the loan amount from the principal debtor and thereafter from the other guarantor, namely, Mam Chand before getting an order for the attachment of the salary of respondent No. 4.

11. Respondent No. 4 on being asked, as to whether the principal debtor is working in Govt. Hospital, Rewari or not, pleads ignorance. From the facts, it is clear that the authorities under the Societies Act, 1984 have been taken for a ride by respondent No. 4 so as to escape his liability. It is a settled principle of law that petitioner-bank can recover the amount either from the principal debtor or even from the guarantor concerned. The guarantor concerned has no role to play to direct the bank from whom the loan should be recovered. It is not disputed by respondent No. 4 that the bank has the discretion to recover the amount from the guarantor even without proceeding against the principal debtor or the other guarantor.

12. That being so, no fault could have been found in the order dated 22.01.2014 (Annexure P-3) by which, the salary of respondent No. 4 was attached. Further, the impugned orders dated 26.08.2014 (Annexure P-

9) and 18.04.2017 (Annexure P-14) respectively have been passed on the asking of respondent No. 4. In fact, the said orders are based upon incorrect facts that the principal debtor was a salaried employee of Govt. Hospital, Rewari, whereas the actual facts show otherwise as per which, the principal debtor has not been located what to talk of recovery of amount by the bank by getting his salary attached. As the impugned orders are on wrong facts provided by respondent No. 4, the same cannot be sustained in the eyes of law and the same are hereby quashed. The order dated 22.01.2014 (Annexure P-3) is revived and the bank will be at liberty to recover the amount by getting the salary of respondent No. 4 attached.

Petition is allowed in above terms.

May 04, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No